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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

FIRST APPEAL NO. 934 OF 1996

The Divisional Manager
United India Insurance Co. Ltd.
180, Raviwar Peth, Satara ..Appellant

v/s.

1. Sopan Khashaba Dorge,
Taluka-Man, Dist. Satara.

2. Dhondiram Anandrao Phadatare
At post-Sambarwadi,
Tal. & Dist. Satara ..Respondents

Mr. Dilip Mahadik i/b. S.R.Singh for the Appellant
Mr. P.J.Shinde, Advocate for Respondent no.1

CORAM : ANOOP V. MOHTA,J.
DATED : 24th September, 2007

ORAL JUDGEMENT

The present appeal is by Insurance company. The challenge is to the order passed by Member of M.A.C.T., Satara dated 16-10-1995 whereby the appellants and owners have been directed to pay jointly and severally an amount of Rs. 1,22,200/- with 12% interest.

2. The injured Respondent Sopan Kashabha Dorge met with accident which took place on 21-9-1990 because of rash and negligent driving of the truck no.MWF 4384, a goods vehicle. The injured was Gratuitous passenger.

3. After cosnidering the material as well as evidence taken on record, the Learned Trial Court (MACT, Satara) awarded the compensation in favour of injured Respondent.

4. There is no challenge made and/or even raised by the owner of the said vehicle. The findings, therefore, remain intact so far as the owner's point of view. Therefore, at the instance of Insurance company it is difficult to interfere with such findings. However, in view of the Apex Court decisions about Gratuitous passenger in **National Insurance Co. Ltd. v/s.Bommithi Subbhayamma and others reported in 2005 ACJ 721, Civil Appeal No. 5825/2006 (Supreme Court), New India Assurance Co. Ltd. v/s. Diwakar and others reported in 2007 ACJ 215,** the law is settled that the death of Gratuitous passenger in truck when it met with accident unless specifically covered by Insurance policy, the Insurance company is not liable for the compensation. Insurance company is not statutorily required to ensure passenger travelling in the goods vehicle. The owner of the such goods vehicle is alone liable for the compensation.

5. The Learned Counsel appearing for the appellant, therefore, submitted that in view of the settled law, the appellant Insurance company is not liable to make

the payment of compensation to the Gratuitous passenger and in the present case admittedly injured was Gratuitous passenger. The above said compensation awarded by Motor Accident Claim Tribunal is, therefore, unsustainable and it must be set aside accordingly.

6. The Learned Counsel appearing for Respondent claimant fairly submitted that as there is no challenge raised by the owner of the vehicle at the instance of appellant, so far as merit of the matter is concerned, need not to interfere with at this stage of the proceedings after more than 11 years. The findings so arrived at is well within the framework of law as well as the record. The trial Court has rightly granted the award in favour of the original claimant as they proved the rash and negligent driving as well as issue of quantum. The submission as raised, therefore, has substance. There is no question now to interfere in so far as grant of award in favour of claimant.

7. The question still remains that in view of the Supreme Court judgments referred above and in so far as

appellant Insurance company is concerned, as they are are entitled to recover the said amount from the original owner as pursuance to the order passed by the trial Court, they have deposited the said amount.

8. The Learned counsel appearing for the Respondent claimant further makes statement that claimants as per instructions have already withdrawn the said amount immediately after the order passed by the Court to deposit the same.

9. He strongly relied on **National Insurance Company v/s. Baljeet Kaur & others reported in 2004 ACJ 428, Oriental Insurance Company Ltd. v/s. Nanjappan and others reported in (2004) 13 SCC 224, National Insurance Co. Ltd. v/s. Kusum Rai & others reported in (2006) 4 Supreme Court Cases 250** and submitted that Apex Court in above matters directed the Insurance company to recover the said money from the owner in the same manner as was directed in Nanjappan (supra).

10. In the facts and circumstances of the case, therefore, I am also of the view that the Appellant Insurance Company is at liberty to recover the said amount from the owner as the Respondent claimants have already withdrawn the said amount deposited by the

Insurance company and further as there is no challenge made by the owner of the vehicle.

11. The Insurance company is at liberty to recover the said amount in view of the Apex Court decision from the owner.

12. The Appeal is accordingly allowed with liberty. No cost.

[ANOOP V. MOHTA,J.]